

Hawaii NPDES Permit Program Approval -- ACTION  
MEMORANDUM

Regional Administrator, Region IX

The Administrator  
THRU: AX

ISSUE

Shall the proposed NPDES Permit Program of the State of Hawaii be approved?

DISCUSSION

On August 30, 1974, this office received from the Acting Governor of Hawaii a full and complete description of the program it proposes to establish to administer the National Pollutant Discharge Elimination System in that State. Copies of this description were submitted at that time to EPA Headquarters (OECC) as well as to this office. The Federal Water Pollution Control Act requires the Administrator to act on this submittal within 90 days or by November 28, 1974.

The program description submitted by the State has been reviewed and found to be in conformance with guidelines promulgated at 40 CFR 124 as required by Sec. 304(h) (2) of the Act. A proposed agreement for operation of the NPDES program in Hawaii has been prepared and signed by the Director of the Hawaii Dept. of Health and the Regional Administrator, Region IX (Tab A). The State has previously received approval of its continuous planning process as being in accord with Section 303(e) of the Act (Tab B).

A public hearing on the proposed State program and operating agreement was held in Honolulu, Hawaii, on October 10, 1974; the record of that hearing is enclosed (Tab C).

The authority of the State to carry out the NPDES program has been reviewed by the Regional Counsel, whose opinion is attached (Tab D). While the State's authority to carry out the provisions of the Act and implementing regulations is adequate in almost all respects, it is noted in the Regional Counsel's opinion that in a limited number of instances the exercise of this authority by the Director is discretionary and therefore this authority may not come up to the required standard. The State is also considering certain regulatory revisions (Tab E) on which it held a public hearing on October 8, 1974. Adoption of these revisions is expected shortly.

CONCURRENCES

SYMBOL	DATE	NAME	DATE	NAME	DATE	NAME	DATE
AX	10/10/74	AW	10/29/74	RF	10/30	W	30 Oct 74
RF		W		AW		RF	

The State of Hawaii has in the past not been noted for having an aggressive regulatory program in the area of water pollution control. However, this office has been working closely with the State to upgrade that program. During the period of interim authorization, the State requested and received authority and issued two major industrial NPDES permits. To enhance the prospects for satisfactory operation of the NPDES by the State in the future, arrangements have recently been completed to assign, under the Intergovernmental Personnel Act, four EPA personnel experienced in the areas of permit program administration, permit drafting, compliance monitoring, and enforcement case preparation, respectively.

It is expected that all major industrial permits and all but two major municipal permits will be issued prior to November 28, 1974, the date by which final action must be taken on the State's request for program approval. With the assignment of experienced EPA personnel to the State and continuing assistance by the Regional Office permits staff, the State can be expected to complete the issuance of all NPDES permits by June 30, 1975, without serious difficulty.

Should Hawaii's program be approved, this office will closely monitor the performance of the State in implementing the program. Where necessary appropriate EPA enforcement action will be taken to insure that the objectives of the NPDES program in Hawaii are realized.

#### ALTERNATIVES

The Administrator may make a positive finding or a negative finding as to whether the program which the State proposes to establish is in conformance with the guidelines and requirements of the Act.

#### Positive Finding:

- |      |   |
|------|---|
| Pro: | <ol style="list-style-type: none"><li>1. Prompt affirmative action would be consistent with the intent of the Act.</li><li>2. Approval would make possible the more efficient implementation of the NPDES program in a remotely located State.</li><li>3. Negative action requires a finding of nonconformance with the guidelines or requirements of the Act. No such significant deficiency is believed to exist.</li></ol> |
| Con: | <ol style="list-style-type: none"><li>1. Approval of the NPDES program of a State whose past regulatory efforts have not been aggressive could subject the Agency to criticism.</li></ol>   |

RECOMMENDED ACTION

That the program proposed to be established by Hawaii to administer the NPDES be found to be in conformance with the guidelines and requirements of the Act and that it be approved together with the proposed State/Federal operating agreement.

Approve \_\_\_\_\_

Disapprove \_\_\_\_\_

Date \_\_\_\_\_

DISPOSITION

A letter of approval to the Governor of Hawaii must be prepared for the Administrator's signature. The approved State/Federal operating agreement would be an enclosure to that letter. A notice of program approval must be published in the Federal Register.

CONCURRENCES

J. I. Agee      Concur \_\_\_\_\_      Non Concur \_\_\_\_\_      Date \_\_\_\_\_

A. G. Kirk      Concur \_\_\_\_\_      Non Concur \_\_\_\_\_      Date \_\_\_\_\_

Prepared by: 9A:R. L. O'Connell:mc:AC 415/5560102:10/25/74

Paul De Falco, Jr.

Enclosures:

- Tab A Proposed State/Federal  
Operating Agreement
- Tab B Section 303(e) Approval  
Letter
- Tab C Public Hearing Transcript
- Tab D Regional Counsel Opinion
- Tab E Proposed Regulatory  
Revisions

Reading file

Enf. Div./Permits Br.

SLeibowitz/mc 10/29/74

File \_\_\_\_\_

Stored 19, 20, & 21

ENVIRONMENTAL PROTECTION AGENCY  
Environmental Protection Agency  
Region IX  
100 California Street  
San Francisco, California 94111  
Hawaii NPDES Program Approval

Regional Administrator

OCT 30 1974

Assistant Administrator for Enforcement  
and General Counsel, EPA, Washington, D.C.  
(EG329)

Transmitted herewith is an Action Memorandum for the Administrator,  
which recommends that Hawaii's NPDES Program Submittal be approved. The  
Program Submittal was previously forwarded to your office.

Should you require any additional input from the State or this office,  
please let me know.

Original signed by  
Russell Freeman

*Paul De Falco*  
Paul De Falco

Enclosure

bc: A&W Programs Div, Region IX  
Regional Counsel, Region IX  
HMC Div, Region IX

Reading file  
Enf. Div.  
Permits Br.  
SLeibowitz/mc 10/28/74  
File 815.4

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CONCURRENCES

SYMBOL	<i>RF</i>	<i>WAD</i>	<i>ALW</i>	<i>gmc</i>	<i>RF</i>	<i>LA</i>	<i>Com. end</i>
SURNAME						<i>Abramson</i>	<i>JH</i>
DATE		<i>10/29/74</i>	<i>10/29/74</i>	<i>10/29/74</i>	<i>10/30/74</i>	<i>30 OCT 74</i>	<i>10-3074</i>